THE HONOURABLE SRI JUSTICE GODA RAGHURAM
AND
THE HONOURABLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION NO.7456 OF 2005

BETWEEN:

N.Mahadev son of Vithal Rao

…Petitioner

VS.

The District and Sessions Judge, Adilabad and another

..Respondents

THE HONOURABLE SRI JUSTICE GODA RAGHURAM
AND
THE HONOURABLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION NO.7456 OF 2005

ORAL ORDER(**Per GR,J**)

By the order of the 1st respondent dated.27-07-2002, punishment of reduction to a lower rank in the seniority list was imposed on the petitioner, under Rule.9(viii) of the A.P. Civil Services(CCA) Rules, and his rank in the seniority list (of Junior Assistant) was reduced by 30 places. His appeal to the 2nd respondent was rejected by the order dated.29-08-2003, confirming the order of the 1st respondent. Against these two orders, primary and appellate the writ petition is filed seeking a consequential direction that on invalidation of the penalty the 1st respondent be directed to promote him as Senior Assistant on par with his immediate juniors, with all consequential benefits.

The petitioner while working as a Junior Assistant in the Court of Judicial First Class Magistrate, Adilabad was transferred to the Court of Munisf Magistrate, Chennur in the same district, on administrative grounds. After receiving the transfer orders, he drew the Advance Pay and TTA. He however did not join at Chennur. He also failed to remit back the Advance Pay and TTA. He also sent up directly and without routing through the proper channel a representation to the High Court.

The 1st respondent thereupon initiated departmental enquiry against the petitioner and in the charge sheet he was

arraigned for having committed the misconduct of drawing the advance TTA and Pay but failing to remit the same; without just cause failing to join duty at Chennur despite relief at Adilabad; for sending up an unjustified complaint against the Judicial Officer concerned of Adilabad to the High Court without intimation to the 1st respondent; for failing to submit explanation for the show cause memo issued by the learned Munsif Magistrate, Luxettipet who was in Full Additional Charge of the post at Chennur; and for having sent up an application for commuted leave for 60 days from 01-08-1997 to 29-9-97 at the petitioner's pleasure on 29-10-1997 instead of joining duty at Chennur.

The petitioner submitted his explanation to the charge memo. An enquiry officer was appointed and after a due course of enquiry, found the petitioner guilty of the charge of dereliction of duty and insubordination but not of the charge of unauthorized absence and misappropriation of TTA and Advance Pay. After receipt of the enquiry report the 1st respondent found the petitioner guilty of all the charges and imposed the penalty of stoppage of one increment without cumulative effect. Aggrieved thereby, the petitioner preferred an appeal to the 2nd respondent. By an order dated.26-02-2002 the 2nd respondent allowed the petitioner's appeal and remitted the matter to the 1st respondent directing a reconsideration of the matter and to pass appropriate orders only after serving a copy of the enquiry report on the petitioner and complying with the requirements of natural justice. The 1st respondent served on the petitioner a copy of the enquiry officer's report and his findings and directed him to submit an explanation after indicating the disciplinary authority's disagreement with the

enquiry officer's conclusions and findings to the extent of exonerating the petitioner in respect of certain of the charges. Eventually, after receipt of the explanation of the petitioner the 1st respondent by an order dated.09-07-2002 imposed the punishment of reduction of rank by 30 places.

Regarding the charge of temporary misappropriation of TTA and Advance Pay, the primary and appellate authorities found concurrently that the petitioner had drawn these amounts in July-1997 but had failed to submit bills for adjustment till he joined duty in Chennur in February-1998 and that the amount drawn by the petitioner were ultimately recovered from his salary. The concurrent finding is that as the petitioner drew the amounts, which were recovered from his pay bills, a charge of misappropriation of funds is established. This conclusion was fortified by reference to a provision in the A.P. Financial Code and Rule.72 of the A.P. Travelling Allowance Rules,1996 which ordain that an officer who draws the TTA should account for the expenditure incurred within three months. Since there was no justification for the more than eight months delay and since the TTA amount and Advance Pay were eventually recovered from the petitioner's salary, the primary and appellate authorities concurrently and rightly found the petitioner guilty of the charge of misappropriation of the funds.

Regarding the other charge of unauthorized absence the 1st respondent recorded that after his transfer by the order dated.26-07-1997 the petitioner was relieved on 31-07-1997 at Adilabad with a direction to report at Chennur. The petitioner drew the TTA and Advance Pay and on 06-08-1997 addressed a letter to the Hon'ble Chief Justice setting out a complaint against the Judicial Officers at Adilabad. In another representation dated.09-10-1997 to the High Court the petitioner

mentioned that he was suffering from Hypertension, Chest Pain and who apprehending death in a false encounter should he report at Chennur. No basis for this delusional apprehension is set out in the pleadings. He went on extending his leave and in support of such extended leave applications the petitioner produced medical certificates which show that he was treated as an out-patient by a private doctor and was admitted into the hospital on 20-10-1997 and was discharged on 23-07-1997. No clear ailment or physical disability which incapacitated the official functioning of the petitioner for over seven months was disclosed in any medical certificate produced by petitioner. On a comprehensive analysis of the evidence on record in the domestic enquiry the 1st respondent found and the 2nd respondent concurred that the petitioner's application for leave suggesting a health condition was a mere ruse to avoid the obligation of joining at Chennur and accordingly found the petitioner guilty of the charge of unauthorized absence. The 1st respondent also found the petitioner guilty of the charge of having directly submitted a representation to the Hon'ble Chief Justice without routing through the District Judge and found that there was no satisfactory explanation forthcoming from the petitioner justifying this unusual conduct.

The 2nd respondent carefully analyzed the entire material on record and in a cogent appellate analysis found no grounds to interfere with and accordingly dismissed the appeal.

In view of the concurrent findings of the primary and appellate authorities which are based on evidence and which are not perverse, this Court discerns no grounds for judicial review.

There are no merits. The writ petition is accordingly dismissed. No order as to costs.

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GODA RAGHURAM,J

22ND JUNE 2007
***TSNR**

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S.ANANDA REDDY,J